

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

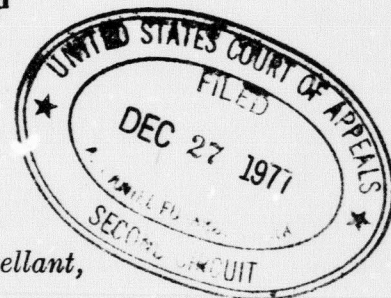
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To be argued by
MICHAEL J. SALTSER

United States Court of Appeals
FOR THE SECOND CIRCUIT



In the Matter of
SEAFARER FIBER GLASS YACHTS, INC.,
Debtor-Appellant,

THE STATE OF NEW YORK, DEPARTMENT OF TAXATION
AND FINANCE, SALES TAX BUREAU,
Claimant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF OF DEBTOR-APPELLANT
SEAFARERS FIBER GLASS YACHTS, INC.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

In the Matter of

SEAFARER FIBER GLASS YACHTS, INC.

Debtor-Appellant

No. 77-5025

THE STATE OF NEW YORK, DEPARTMENT
OF TAXATION AND FINANCE, SALES
TAX BUREAU

Claimant-Appellee

-----X

BRIEF OF DEBTOR-APPELLANT
SEAFARER FIBER GLASS YACHTS, INC.

Issues Presented for Review

Whether debtor-appellant's sales of fiberglass yachts to non-residents of the State of New York come within the provisions of Section 1117 of the New York State Tax Law (the "Tax Law") which exempt, from retail sales tax, motor vehicles sold to non-residents?

Statement of the Case

Nature of the Case

This appeal arose out of a motion brought on in proceedings for an arrangement pursuant to Chapter XI of the Bankruptcy Act, 11 U.S.C. §§ 701 et seq, filed by debtor-appellant, Seafarer Fiber Glass Yachts, Inc. ("Seafarer"), on November 14, 1974 and presently pending in the United States District Court for the Eastern District of New York at Westbury, New York. By notice of motion, returnable June 23, 1976, Seafarer moved to expunge

and disallow a claim filed in the Chapter XI proceedings on behalf of the State of New York, Department of Taxation and Finance, Sales Tax Bureau ("Claimant") (16a, 17a).^{1/} The claim was for additional New York State sales taxes allegedly due from Seafarer and this appeal pertains to issues raised by determinations relating to that motion made by the Bankruptcy Judge and by a District Court Judge on appeal.

Proceedings and Dispositions Below

On January 17, 1977, a hearing was held in the United States District Court for the Eastern District of New York at Westbury, New York before the Hon. William J. Rudin, Bankruptcy Judge, on Seafarer's motion to expunge and disallow Claimant's claim for additional sales taxes (23a et seq.). In written findings, conclusions and order, dated May 17, 1977, Judge Rudin sustained Seafarer's objections to Claimant's claim for additional sales taxes and concluded that Seafarer was entitled to a credit against Claimant's claim to the extent of the taxes alleged to be due with respect to sales made to non-residents in accordance with certain procedures as testified to by Seafarer's president (61a-69a). In reaching this conclusion, the Court held, in part, that the provisions of

^{1/} Unless otherwise indicated references are to pages in the Joint Appendix.

the Tax Law, which provide an exemption from sales tax for sales of "motor vehicles" to non-residents, applies to sales of sail and motorboats (65a).

Claimant appealed from the findings, conclusions and order of Judge Rudin to the District Court (13a) wherein the matter was argued before the Hon. George C. Pratt on August 25, 1977.

In a memorandum decision and order, dated September 1, 1977, Judge Pratt reversed the decision of the Bankruptcy Judge and held that Seafarer's yachts were not motor vehicles within the meaning of Section 1117 of the Tax Law and that Seafarer's sales of those yachts were, accordingly, not entitled to the exemption set forth in that section (70a-76a).

Seafarer has appealed to this Court from the memorandum and order of Judge Pratt (77a).

Statement of Facts

Seafarer is a corporation organized and existing under the laws of the State of New York (34a). It was incorporated in 1959 (34a) and is engaged in the business of designing, manufacturing and selling fiberglass sailing yachts (33a, 34a).

Seafarer's manufacturing plant and showroom are located in Huntington, New York (34a). It sells directly to the general public from its showroom in Huntington and also sells its line of boats and yachts through a network

of dealers located in several states (42a).

On November 14, 1974, Seafarer filed, in the District Court, a petition for an arrangement under Chapter XI of the Bankruptcy Act, 11 U.S.C. §§ 701 et seq. (1a) and on November 19, 1974 an order was signed by the Hon. William J. Rudin, Bankruptcy Judge, authorizing Seafarer, as a debtor-in-possession, to continue in possession of its property and operate its business until further order of the Court (2a). Pursuant to said order, Seafarer has continued to operate its business during the pendency of these proceedings as debtor-in-possession (Seafarer's Post Hearing Memorandum transmitted as part of Record on Appeal 2).

On May 10, 1976, Seafarer filed a plan of arrangement with its unsecured creditors (5a) and subsequently thereto a majority in number and amount of Seafarer's creditors approved the proposed plan of arrangement (6a).

In or about April, 1975 Claimant filed a proof of claim in the proceedings in the total sum of \$398,535.40 based upon taxes alleged to be due for the period December 1, 1969 through August 31, 1974 (14a,15a). The claim form recited that the amount of tax due for the period in question was \$351,722.69 and that there was interest due on such amount in the sum of \$46,812.71 (14a).

It was Claimant's contention that the tax due arose from certain sales of boats and yachts made by Seafarer to persons residing outside of the State of New York upon which New York ~~State~~ sales taxes were not collected or paid by Seafarer (Seafarer's Post Hearing Memorandum 3).

Subsequent to the filing of its claim, Claimant reaudited Seafarer's books and records (26a) and on the basis of such reaudit, substantially reduced its claim to the sum of \$166,510.90 plus penalty and interest (36a).^{2/}

In or about July and August, 1976, the Claimant again reaudited Seafarer's books and records with respect to its claim (21a,26a). As a result of such second reaudit, its claim was further reduced to the sum of \$151,524.90 plus interest (21a,27a). An amended proof of claim reflecting this reduction, dated August 7, 1976, was filed by Claimant (21a,22a).

Seafarer had previously moved to expunge and disallow Claimant's original claim (16a-20a). On January 17, 1977 a hearing was held with respect to that motion which had been made applicable to the amended claim (23a et seq.).

^{2/} Seafarer's president testified that the amount originally claimed to be due was simply based upon all sales shown on Seafarer's periodic sales tax returns upon which no sales tax had been collected. According to Mr. Acworth no attempt had been made by Claimant at that point to delete any sales, such as those made to dealers, which were concededly not subject to tax (35a). Upon the re-audits, Claimant gave Seafarer credit for these sales (35a,36a).

In Seafarer's Objections to the claims filed by the Claimant, it was alleged that there was nothing due and owing by Seafarer to the Claimant for sales tax (19a). It was also alleged that the Tax Law, as applied by the Claimant to Seafarer's sales of its boats and yachts to non-residents of the State of New York for use outside of the State of New York, was "inequitable, unfair, discriminatory and unconstitutional" (19a).

During the hearing, at which Brian Acworth, president of Seafarer (30a) testified, it was established that in all cases where delivery was made to out-of-state residents Seafarer, prior to delivery, obtained from its customer a certificate indicating that the customer was not a resident of the State of New York, was purchasing the vessel in question for use outside of the State of New York and would take delivery out of the State of New York (40a,41a). The certificate indicated the purchaser's address, identified the vessel being purchased and was accompanied by some independent proof of the purchaser's out-of-state residence, such as a copy of a driver's license (48a-50a). Each certificate was signed and dated by the purchaser (50a,58a). The certificates were all in the form received as Seafarer's Exhibit 2 in evidence at the hearing (50a-57a,59a,60a).

Seafarer's president testified that these certificates were obtained in reliance upon advice he had

received from Claimant when he requested information pertaining to compliance with the Tax Law in connection with sales to non-residents (40a).

Mr. Acworth also testified concerning the manner in which the boats, the sales of which are alleged to be taxable, were delivered to the non-resident purchasers. He indicated that these boats were delivered in one of two ways, as follows:

(a) Pickup - These boats were delivered to out-of-state residents by means of truck or other land conveyance contracted for by the purchaser (43a). The trucker in these cases was a local carrier, usually a boat yard (43a).

(b) Sailaway - These boats were delivered in the water (43a,44a). Debtor's president testified that, consistent with the statements its non-resident purchasers made in the certificates, it was Seafarer's policy to have an employee sail the boat into Long Island Sound, beyond the halfway mark, and deliver it to the customer in the water presumably within the boundary lines of the State of Connecticut (44a-46a). Acworth testified that this use of the boat also served as a shakedown cruise (45a). After delivery of the boat to the customer, the boat was then returned to Seafarer's Huntington dock facility where Seafarer's representative would disembark and the customer

would then sail the vessel to its ultimate destination (44a,45a).

In the case of all sales wherein delivery to its non-resident customers was by means of "Pickup" or "Sailaway" as described above, Seafarer did not require the customer to pay New York State sales tax and consequently did not collect any sales tax from such purchasers (39a,40a,50a,51a). Seafarer's representatives believed that such sales were not subject to the tax (39a,40a). Claimant, on the other hand, apparently contends that all such sales are subject to the sales tax.

Argument

DEBTOR-APPELLANT'S SALES OF FIBERGLASS
YACHTS TO NON-RESIDENTS OF THE STATE OF
NEW YORK COME WITHIN THE EXEMPTION OF
SECTION 1117 OF THE NEW YORK STATE TAX LAW

Section 1117 of the Tax Law exempts from the retail sales tax "motor vehicles" sold to non-residents of the State of New York despite the fact that delivery of the vehicle being purchased is made within the State of New York.

Accordingly, if the vessels sold by Seafarer to out-of-state residents, the sales of which are alleged by Claimant to be subject to sales tax, are "motor vehicles", no New York State sales tax was due regardless of whether or not the vessels were delivered within the

State of New York.^{3/} Under the statutory language and case precedent, Seafarer's boats and yachts are indeed "motor vehicles" within the meaning of Section 1117.

Subdivision (c) of Section 1117 of the Tax Law indicates that the term "motor vehicle", for the purposes of that section, "...shall include a motor vehicle as defined in section one hundred twenty-five of the Vehicle and Traffic Law...."

Section 125 of the Vehicle and Traffic Law defines "motor vehicle" as follows:

Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except (a) electrically driven invalid chairs being operated or driven by an invalid, (b) vehicles which went only upon rails or tracks, and (c) snowmobiles as defined in Article 47 of this chapter.

Clearly Seafarer's vessels are propelled by a power other than muscular power. By definition, they are propelled by sail and windpower.^{4/} Judge Pratt, after setting

^{3/} As noted above, in the case of each sale with respect to which Claimant alleges sales tax is due, Seafarer, at the suggestion of Claimant's representative, obtained a certificate and additional proof in the form of Seafarer's Exhibit 2 in evidence (59a, 60a) and, accordingly, compliance with subdivisions (a) (4) and (b) of Section 1117 of the Tax Law is indicated.

^{4/} In addition all of the vessels were sold either with inboard or outboard engines or were equipped for later installation or attachment of an engine. Moreover, Claimant, on page 4 of its brief submitted to Judge Pratt, conceded that a sailboat is a "vehicle".

forth the definition of motor vehicle in Section 125 of the Vehicle and Traffic Law, stated, in his decision, "The Bankruptcy Judge determined, correctly of course, that the boats sold to the out-of-state customers were not propelled by muscular power." (71a). Accordingly, it has been established that Seafarer's vessels are within the category of "vehicle", encompassed by Section 125. Thus, the only question remaining is whether Seafarer's vessels are "...operated or driven upon a public highway."

In Websters Third New International Dictionary 1966, the first listed definition for the term "highway" is:

a road or way on land or water
that is open to public use as a
matter of right whether or not
a thoroughfare...(emphasis added).

Both the Supreme Court of the United States and the New York State Courts have similarly defined "highway". In Economy Light & Power Co. v. United States, 256 U.S. 113, 65 L. Ed. 847, 41 S. Ct. 409 (1920), the Supreme Court said:

It would be a narrow rule to hold that in this country, unless a river was capable of being navigated by steam or sail vessels, it could not be treated as a public highway....If it be capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact, and becomes in law a public river

or highway. Id. at 122-23
(emphasis added).

See, Kosydar v. National Cash Register Co., 417 U.S. 62, 66, 40 L. Ed. 2d 660, 94 S. Ct. 2108 (1974); Utah v. United States, 403, U.S. 9, 10, 12, 29 L. Ed. 279, 91 St. Ct. 1775 (1971); The Montello, 20 Wall 430, 440-43, 22 L. Ed. 391 (1874); The Daniel Ball, 10 Wall 557, 563, 19 L. Ed. 999 (1870).

Recently, in a discussion of eminent domain, a New York Court defined highways to include waterways. The waterway in question in that case was a basin at the Eastern Terminus of the Erie Canal on the Hudson River. The Court in City of Albany v. State of New York, 71 Misc. 2d 294, 335 N.Y.S. 2d 975 (Ct. Cl. 1972) said.

The City of Albany has urged that there is a distinction between actual use for mooring, docking and harboring and the ultimate use by the State as a highway.... The Basin, while it existed, must be regarded as part of the Barge Canal system and thus a highway of commerce. A highway is described as a public way which every person has a right to use, and included are carriage-ways, footways, bridleways, bridges, railroads, canals or navigable rivers (Black's Law Dictionary, Fourth edition). A highway, therefore, is a course over which, or by which, transportation of items used in commerce moves, and it matters little if it moves by way of wheeled vehicles or by boat or barge. Id. at 298, 335 N.Y.S. 2d at 980. (emphasis added).

See, People v. McCarthy, 80 Misc. 2d 143, 362 N.Y.S. 2d 785 (N.Y.C. Crim. Ct. 1974); Town of Hempstead, v. Oceanside Small Craft Marina, Inc., 64 Misc. 2d 4, 311 N.Y.S. 2d 668 (Sup. Ct. Nassau Co. 1970), rev'd on other grounds, 38 App. Div. 2d 263, 328 N.Y.S. 2d 894 (2d Dept. 1972); aff'd 32 N.Y. 2d 859, 299 N.E. 2d 895, 346 N.Y.S. 2d 529 (1973).

Several cases involving the State Tax Commission have defined public highway as including waterways. In People ex rel. New York Central Railroad Company v. State Tax Commission, 258 App. Div. 356, 16 N.Y.S. 2d 812 (3d Dept. 1940), the Court held that a section of the tax law referring to "highway" included waterways used by the public. At issue was the imposition of a franchise tax on railroad trestles crossing two bodies of water. The Court held:

Since the Referee has found that the waters of Doodletown Bight and Popolopen Creek are public navigable waters there exists an easement or right in the public to use them as a highway. Being a public highway, a franchise to cross is necessary." Id. at 359, 16 N.Y.S. 2d at 815-16 (emphasis added).

See, People ex rel. New York Central Railroad Company v. State Tax Commission, 239 N.Y. 183, 146 N.E. 197 (1924); People ex rel. Lehigh Valley Railroad Co. v. State Tax Commission, 220 App. Div. 1, 220 N.Y.S. 467 (3d Dept. 1927),

aff'd, 247 N.Y. 9, 159 N.E. 703 (1928); People ex rel. New York, O & W. R.R. Co. v. State Tax Commission, 116 Misc. 774, 191 N.Y.S. 464 (Sup. Ct. Albany Co. 1921).

In view of the foregoing, Seafarer contends that its vessels are clearly "motor vehicles" within the meaning of Section 125, since they are the type of vehicles described in Section 125 and are operated upon a "public highway."

In arriving at a contrary result, Judge Pratt relied upon interpretations of other sections of the Vehicle and Traffic Law and of other New York State statutes (72a-76a). It is submitted that this decision distorted the plain language of Section 125 of the Vehicle and Traffic Law as incorporated by reference into Section 1117(a) of the Tax Law. More importantly, the District Court's interpretation of the statute results in unjust and inequitable consequences to Seafarer.

It is well-established that the construction of a statute must be sought from the words and language stated therein and in the absence of ambiguity or doubt, there is no reason to look elsewhere for its meaning. See, e.g., Roosevelt Raceway Inc. v. Monaghan, 9 N.Y. 2d 293, 304 (1961), appeal dismissed, 368 U.S. 12 (1961); New Amsterdam Casualty Company v. Stecker, 3 N.Y. 2d 1, 6 (1957); Daniman v. Board of Education of the City of

New York, 306 N.Y. 532, 543 (1954); Meltzer v. Koenigsberg, 302 N.Y. 523 (1951). In other words, the clear, simple and unambiguous words of the Legislature should be the controlling guide for interpretation of statutory language. As shown above under the relevant case law, the clear and simple meaning of the word "highway" includes waterways, so that Seafarer's vessels would come within the definition of motor vehicles which are exempt from sales tax under Section 1117(a) of the Tax Law.

Accordingly, the District Court's interpretation of a public highway which looks to other definitional and substantive provisions of the Vehicle and Traffic Law and other laws is erroneous. It is the plain language of Section 125 of the Vehicle and Traffic Law which controls; reference to other provisions of the Vehicle and Traffic Law is inappropriate and not material to the question at hand.^{5/} The Legislature did not intend that one must look further than the unambiguous language of Section 125

^{5/} Similarly, the District Court's discussion concerning the regulation of boats in the Navigation Law is also inapplicable to the issue in question.

of the Vehicle and Traffic Law to determine the meaning and scope of the term "motor vehicle" for purposes of Section 1117(a) of the Tax Law.^{6/}

More significantly, a construction of Section 1117(a) of the Tax Law to exclude vehicles such as Seafarer's vessels from the motor vehicle exemption provided therein would result in substantial hardship to Seafarer. The Courts have recognized that where the language of a statute is susceptible of different interpretations, the construction which avoids injustice, hardship, constitutional doubts, or other objectionable results should be adopted. H. Kauffman & Sons Saddlery Co. Inc. v. Miller, 298 N.Y. 38, 44 (1948); Saltser & Weinsier, Inc. v. McGoldrick, 295 N.Y. 499, 508 (1946). Here, it is

^{6/} In this respect it should be noted that Judge Pratt's implication that the term "motor boats" appears in Section 1115(a)(18) of the Tax Law and is differentiated therein from the term "motor vehicles" (76a) is incorrect. Section 1115(a)(18) of the Tax Law refers to, "...the sale of boats, snowmobiles or motor vehicles...." (emphasis added). The word "motor boats" does not appear in the subsection. The reason for the use of the word "boats" and "motor vehicles" in the same sentence is because not all boats are "motor vehicles" within the definition of Section 125 of the Vehicle and Traffic Law. Rowboats, canoes, peddle boats and other boats which are propelled by muscular power are clearly not "motor vehicles" within the meaning of Section 125. For this reason it was necessary for the Legislature to use both the words "boats" and "motor vehicles" in this sentence.

clear that the construction of the statute which will avoid such results is the inclusion of the vessels within the motor vehicle exemption of Section 1117(a).

The substantial similarity in this instance in the relation to the public interest of boats and automobiles negates the existence of a reasonable basis for difference in tax classification. The State's probable purpose in exempting motor vehicles purchased by non-residents from the sales tax is as applicable to boats as it is to cars. The practical effect of such an exemption is to make it practical and possible for New York sellers of these high priced commodities to make sales to out-of-state residents. Without such an exemption, an out-of-state purchaser might be subject to double or increased taxation by reason of the use tax imposed by his state of residence upon registration of the vehicle. Prospective purchasers facing the possibility of such increased taxation would simply refuse to deal with New York vendors, such as Seafarer, creating a situation of substantial hardship.

With respect to the question of constitutionality, the equal protection clause forbids selection of a particular class for separate tax treatment unless such determination is based upon a reasonable policy for differentiation and all in the same class have equality.

Weber v. City of New York, 18 Misc. 2d 543, 195 N.Y.S. 2d 269 (Sup. Ct. N.Y. Co. 1959); New York Steam Corp. v. City of New York, 268 N.Y. 137, 197 N.E. 172 (1935). In the instant case it should be held that sailboats are a part of the same class as other vehicles such as automobiles. There is no reasonable basis on which to classify them differently. Thus, exempting some motor vehicles from sales tax without exempting boats violates the principles of equality mandated by the Fourteenth Amendment.

Once a state has established, for the purpose of applying certain tax treatment, a class of property, all items within that class are entitled to equal treatment. Any substantial disparity or differences in taxation resulting from the failure of state officers to properly administer the state's tax laws will violate the equal protection clause of the Fourteenth Amendment. See, Wells Fargo & Co. v. Johnson, 214 F. 180 (8th Cir. 1914), aff'd, 239 U.S. 234 (1915); Central Railroad Co. of New Jersey v. Martin, 65 F.2d 613 (3d Cir. 1933); Wyandotte Chemical Corp. v. City of Wyandotte, 199 F. Supp. 582 (E.D. Mich. 1961), rev'd on other grounds, 321 F.2d 927 (6th Cir. 1963).^{7/}

^{7/} Seafarer argued in the proceedings before the Bankruptcy Judge that imposing a tax on the sale of its vessels to non-residents violates the equal protection clause of the Fourteenth Amendment to the Constitution. The Bankruptcy Judge made no finding with respect to the constitutionality of the statute.

Accordingly, in view of the plain meaning of the statutory language in question, the substantial hardship and inequity resulting to Seafarer and the constitutional doubts raised, the decision of the District Court should be reversed.

CONCLUSION

The decision of the District Court holding that Seafarer's vessels are not motor vehicles within the meaning of Section 1117(a) of the Tax Law should be reversed and the decision of Bankruptcy Judge Rudin sustaining Seafarer's objections to Claimant's claim for additional sales taxes should be reinstated.

Dated: New York, New York
December 21, 1977

Respectfully submitted,

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5 two (2)

Brief is hereby filed
day of December 77 27th

Appellee

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